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-and-

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Attorneys for Henrietta D Energy Storage LLC

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

In re

PG&E CORPORATION

-and-

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
☒ Affects Pacific Gas and Electric Company
☐ Affects both Debtors

** All papers shall be filed in the Lead
Case, No. 19-30088 (DM)*

Case No. 19-30088 (DM)

Chapter 11

(Lead Case) (Jointly Administered)

**HENRIETTA D ENERGY STORAGE
LLC'S OBJECTION TO ASSUMPTION
OF ENERGY STORAGE
AGREEMENT**

Hearing Date: May 27, 2020
Time: 10:00 a.m. (PST)

Courtroom: Hon. Dennis Montali
450 Golden Gate Avenue
16th Floor, Courtroom 17
San Francisco, CA 94102

Henrietta D Energy Storage, LLC ("**Henrietta**"), hereby objects to the assumption of its
Energy Storage Agreement with Pacific Gas and Electric Company (the "**Utility**") and, in support
thereof, states as follows:

1 1. On November 4, 2015, Henrietta and the Utility entered into an Energy Storage
2 Agreement (the “**ESA**”) pursuant to which Henrietta agreed to construct a 10 megawatt battery
3 storage facility for the Utility.

4 2. On October 21, 2019, Henrietta filed a proof of claim (Claim No. 79,294) in the
5 sum of \$1,156,904.00 for sums that Henrietta contends to be due to it under the ESA. The Utility
6 disputes that any monies are due to Henrietta under the ESA and contends that Henrietta’s proof
7 of claim should be disallowed.

8 3. On November 22, 2019, Henrietta filed a motion seeking an order modifying the
9 automatic stay so as to permit Henrietta to terminate the ESA and for Henrietta and the Utility to
10 utilize the dispute resolution procedures prescribed in the ESA to resolve their dispute regarding
11 the sums that Henrietta contends to be due to it (Docket No. 4850).

12 4. On January 10, 2020, pursuant a stipulation entered into by Henrietta and the
13 Utility, this Court entered an order granting Henrietta’s motion (Docket No. 5349). Among other
14 things, that order modified the automatic stay “a. To permit Henrietta to serve upon the Utility a
15 notice of termination of the ESA; and b. To require the Parties resolve their dispute in
16 accordance with the dispute resolution process articulated in Article 22 of the ESA.”

17 5. On January 23, 2020, Henrietta notified the Utility that it was terminating the
18 ESA. Although the Parties have commenced the dispute resolution process articulated in Article
19 22 of the ESA, as of the date of this objection, the Parties have not resolved their dispute or
20 completed that dispute resolution process.

21 6. On March 16, 2020, the Utility filed the Debtors’ and Shareholder Proponents’
22 Joint Chapter 11 Plan of Reorganization Dated March 16, 2020 [Docket No. 6320] (the “**Plan**”).

23 7. Under Article 8.1(a) of the Plan, upon the Plan becoming effective and payment of
24 any applicable Cure Amount (as defined in the Plan), certain executory contracts are deemed to
25 be assumed. Under Article 8.2(e) of the Plan, any proofs of Claim filed with respect to an
26 executory contract that has been assumed is deemed to be disallowed and expunged.

27 8. On May 1, 2020, the Utility filed the Notice of Filing of Plan Supplement in
28 Connection with Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization

1 Dated March 16, 2020 (Docket No. 7037) (the “**Plan Supplement**”). The Schedule of Executory
2 Contracts and Unexpired Leases to be Assumed Pursuant to the Plan and Proposed Cure Amounts
3 (the “**Assumption Notice**”) attached to the Plan Supplement as Exhibit B provides that the Utility
4 is assuming the ESA with a \$0.00 cure amount. *See*, Plan Supplement at pg. 822 of 2063
5 (Assumption Notice at page 802 of 1778).

6 9. Henrietta objects to the assumption of the ESA upon the following grounds:

7 (a) The ESA is not an executory contract as it has been terminated pursuant to
8 Henrietta’s January 23, 2020 notice to the Utility; and

9 (b) The Utility is indebted to Henrietta in the principal sum of at least
10 \$1,156,904.00 as set forth in Henrietta’s proof of claim.

11 10. Subsequent to Henrietta’s receipt of the Assumption Notice, Henrietta and the
12 Utility have engaged in discussions regarding the Assumption Notice and the treatment of the
13 ESA under the Plan and, in order to resolve this objection, have agreed to language to be inserted
14 in any order confirming the Plan that the Court may enter. As a result, Henrietta is filing this
15 objection to preserve its rights in the event that the Court declines to include the agreed upon
16 language in its confirmation order or the Court declines to confirm the Plan (as it now exists or as
17 it may hereinafter be amended).

18 Dated: May 14, 2020

MORGAN, LEWIS & BOCKIUS LLP

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20 By: /s/ Richard W. Esterkin
21 William D. Kissinger (SBN 135276)
22 Richard W. Esterkin (SBN 70769)

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